

# FOREIGN ACCOUNT TAX COMPLIANCE ACT (FATCA)

## THINGS YOU SHOULD KNOW

### CUSTOMER FREQUENTLY ASKED QUESTIONS

#### What exactly is FATCA?

FATCA is rapidly becoming the global model for combating offshore tax evasion and promoting transparency. FATCA is an acronym for the United States (US) Foreign Account Tax Compliance Act (FATCA), which was introduced by the US Government in October 2009, but became law as part of the Hiring Incentives to Restore Employment (HIRE) Act on March 18, 2010. FATCA is aimed at ensuring that US persons with financial assets outside of the US are paying US tax.

Under FATCA, US financial institutions must withhold a portion of payments made to foreign financial institutions (FFIs) (see explanation below) that do not agree to identify and report information on their US account holders.

FFIs have the option of entering into agreements directly with the US Inland Revenue Service (IRS), or through one of two alternative Model Intergovernmental Agreements (IGAs) signed by their home country. The Barbados Government entered into a Model 1A IGA with the US treasury Department, which is a reciprocal agreement, and which was effective May 27, 2014. This agreement facilitates the exchange of certain information on each countries' tax payers, in order to increase the collection of taxes for both the US and Barbados.

#### What will be required of Republic Bank Limited?

The Bank must:-

- ✓ Undertake certain identification and due diligence procedures involving our new customers, commencing July 1, 2014;
- ✓ Report annually to the Barbados Revenue Authority (BRA), who will in turn report to the US IRS, information on customers who are US persons or foreign entities with substantial US ownership, commencing September 30, 2015; and
- ✓ Report annually to BRA, who will in turn report to the IRS, certain customers who do not wish to cooperate with the new FATCA requirements e.g. (a) non-participating financial institutions or (b) customers who fail to provide sufficient information to determine whether or not they are a US person, commencing July 1, 2014.

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### Why did the US introduce FATCA?

FATCA is intended to increase transparency for the US Internal Revenue Service (IRS) with respect to US Persons that may be investing and earning income through non-US institutions. The primary goal of FATCA is to gain information about US persons.

### Who does FATCA affect?

FATCA does not directly affect the ordinary Barbadian citizen with a bank account and no ties to the US. However, if you intend to open a new account, you will be asked questions about any possible connections you may have to the U.S.

FATCA affects:-

- ✓ US citizens or US registered businesses such as limited liability companies, trusts, partnerships, estates etc.
- ✓ US individual residents, including **U.S Green Cardholders**
- ✓ A very limited number of nonresident individuals who own certain foreign financial accounts or other offshore assets
- ✓ Local businesses having US ownership
- ✓ FFIs

### What is a Foreign Financial Institution (FFI)?

Broadly speaking, it is any financial institution which is a non US entity that:

- ✓ Accepts deposits in the course of a banking or similar business;
- ✓ Holds financial assets for the account of others as a substantial part of its business;
- ✓ Is engaged primarily in business of investing, reinvesting or trading in securities; and
- ✓ Is an insurance company (or the holding company of an insurance company) that issues or makes payments with respect to a financial account.

Entity types that are covered are:

- ✓ Banks
- ✓ Broker dealers
- ✓ Asset managers and investment funds

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- ✓ Insurance companies other than pure property and casualty (general insurance) or pure term life entities
- ✓ Trust companies
- ✓ Other financial intermediaries (such as custodians and related service providers)
- ✓ Credit unions and cooperatives

For this purpose, a **non-** US entity is any entity that is **NOT** –

- ✓ a partnership, corporation, trust incorporated or created under US law
- ✓ a non US incorporated entity having shareholding of 10% or more OR ownership (substantial ownership) held by -
  - An Individual who was born in the U.S. or is an US citizen or an US resident (including green card holder) or has an U.S. address or U.S. mailing address or US in care of or hold mail as a sole address
  - An US incorporated entity as above described

### Who is a U.S. Person for FATCA purposes?

A US person is:

- ✓ a citizen or resident of the United States (including a green card holder).
- ✓ a partnership, corporation, estate, trust incorporated or created under U.S. law (US incorporated entity)
- ✓ a non U.S. incorporated entity having shareholding of 10% or more OR ownership (substantial ownership) held by -
  - An Individual who was born in the US or is a U.S. citizen or a U.S. resident (including green card holder) or has a U.S. address or US mailing address or US in care of or hold mail as a sole address
  - An US incorporated entity as above described

### How would I know if I am a US Person under FATCA?

There are specific indicators that determine whether you are a US Person, these are:

- US resident or Citizen including **U.S Green Cardholders**

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- US Place of birth
- US home or mailing address
- Only address is a US PO Box, c/o or hold mail address
- Power of Attorney or signing authority having US address
- A US telephone number
- Standing order to transfer funds to an account in the U.S.

### Does FATCA apply to BDS\$ accounts?

#### ***New Accounts***

FATCA does not directly affect the ordinary Barbadian citizen with a bank account and no ties to the US. However, on opening a new account, effective July 1<sup>st</sup> 2014, all banks will ask their customers questions about possible connections those customers may have to the U.S. Specific criteria have been outlined under FATCA, which are required to be used by Banks in order to identify US Persons. If a Bank determines that a customer is a US Person for reporting under FATCA, specified information about that customers' account becomes reportable to the BRA, who will in turn report that information to the US IRS.

#### ***Existing Accounts***

Existing customers with US connections, and whose aggregate deposit account balances fall **ABOVE** certain thresholds stipulated under FATCA (US\$50, 000 for individuals and US\$250,000 for entities), will also be asked by their bankers to provide additional information to enable the bank to determine their US tax status. If found to be a US Person, certain information related to that customers' account will also be reportable to the BRA and in turn, to the IRS .

Existing customers who have US connections, but whose aggregate account balances fall **BELOW** the stipulated thresholds, are **NOT** reportable under FATCA.

FATCA applies to your entire account relationship with the Bank i.e. BDS\$, US\$ and any other currencies.

The FATCA identification and reporting procedures apply to US persons with aggregate account balances OVER certain thresholds:

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- For US Individuals, the threshold is US\$50,000 and over
- For US Entities, the threshold is US\$250,000 and over

Persons who refuse to provide the information required to determine their US status will also be reported as “recalcitrant”.

***Will persons with different accounts at different banks each with under US\$50,000, but amounting to more than that sum in total, be subjected to FATCA?***

You may not be reported by each financial institution. However the IRS may detect your total balances.

### **How will customers be advised?**

Letters will be sent to existing customers whose accounts with the Bank indicate that they MAY be a US person. Those customers will be required to provide their bank with the relevant information to determine their US status.

As a new account applicant, you will be asked to complete additional documents (FATCA forms) to determine any possible connections that you may have to the US.

### **What should you do?**

If you are a FFI, you will be required to:

- ✓ Register with the IRS and or enter into a FFI Agreement with the IRS before April 25, 2014 as a participating FFI or such other FATCA registered status if the territory in which you are registered, has not entered into an IGA with the U.S. Government.
- ✓ Obtain an IRS issued Global Intermediary Identification Number (GIIN)
- ✓ Submit (i) a valid and completed W-8BENE Tax Form and include GIIN, as supporting documentary evidence that you are a participating FFI or either an exempt or deemed- or registered-compliant FFI under FATCA **AND (ii)** the relevant bank FATCA forms as the letter/your branch will outline to you.

If you are an individual who is a US person or a US incorporated entity, you will be required to:

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- ✓ Submit (i) a valid and completed W-9 Tax Form **AND** (ii) the relevant bank FATCA forms as the letter/branch will outline

If you are an individual who is not a US Person but have any of the specific indicators above described, you will be required to:

- ✓ Submit (i) a valid and completed W-8BEN Tax Form as supporting documentary evidence **AND** (ii) the relevant bank FATCA forms as the letter/branch will outline

If you are an entity that is neither a FFI or a US incorporated entity, but have any of the specific indicators above described or US substantial shareholding, you will be required to:

- ✓ Submit (i) a valid and completed W-8BEN-E Tax Form as supporting documentary evidence **AND** (ii) the relevant bank FATCA forms as the letter/branch will outline

Please note that this is only applicable to existing customers. All new entity (corporate/commercial) customers will be required to complete a W-8BEN-E Tax Form.

You must submit the aforementioned documents to your branch of Republic Bank (Barbados) Limited in an envelope clearly labelled "FATCA Documents" by appointment only by the date indicated in the direct correspondence sent to you. Forms are available for completion at the Branch.

New account applicants may complete the forms at the branch on request or at a later date and by appointment only, if additional time is needed to obtain independent advice.

For your ease of reference, we have uploaded on to the Bank's website [republicbarbados.com](http://republicbarbados.com) the various documents and Forms that would assist you:

1. Form W9
2. Form W-8BEN
3. Form W-8BEN-E
4. Bank FATCA Forms
5. Guidance on Supporting Documents Required

As an existing customer, if we do not hear from you after the designated cutoff date stated in your letter, you will be deemed a "recalcitrant" account holder (see explanation below), and the Bank will be required to report certain information pertaining to your account to the IRS through BRA.

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### Who is a “recalcitrant” account holder?

Generally, a “recalcitrant” account holder is any account holder that -

- (1) fails to comply with reasonable requests for information necessary to determine if the account is held by a US person or determine that account holder’s FATCA Status;
- (2) fails to provide the name, address, and social security number (SSN) or US tax identification number (TIN) of each “US person” and each substantial US owner of a non US registered entity; or

### What are the new FATCA forms to be completed?

There are two sets of FATCA forms:

- ✓ The Bank FATCA forms:-
  - U.S. Person Status Form (Individuals only)
  - Non-US Person Declaration
  - Non-US Person Letter of Explanation of US Address
  
- ✓ The IRS tax forms:-
  - ✓ Form W9
  - ✓ Form W-8BEN
  - ✓ Form W-8BEN-E

Each form contains instructions on how to complete. Customers are to complete the forms. Please note that Staff cannot provide advice to customers on what should be included in the forms. *Customers are encouraged to seek independent tax /professional advice should they need assistance in understanding the IRS forms, what information is to be provided or the scope of the new reporting requirements and consequences for non-compliance.*

Detailed instructions on how to complete the IRS tax forms can be found on the IRS website <http://www.irs.gov/FATCA>.

**Who is authorized to sign the FATCA forms particularly where there are multiple signatories and signing limits?**



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The IRS tax Forms must be signed by an authorized signatory, a senior officer or director of the entity, partner if partnership, trustee if trust, executor/administrator if estate.

A similar rule applies for the Bank FATCA forms unless the form specifies otherwise.

We highlight the following specific instructions:-

- ✓ The Non-US Person Letter of Explanation of US Address is to be signed by each substantial owner having a US Address.

### **How will the Bank treat with joint accounts?**

The Bank is guided by its Mandate with the customer. Once a US person is on a joint account, the account is subject to the FATCA requirements. Hence if the US person is non-cooperative, the account must be reported.

### ***Does a Bank official need to witness my signature on the forms?***

Staff are not required to witness the FATCA forms generally.

However, customers who are unable to sign their forms (e.g. illness; differently capable) should seek independent professional advice and a certification should be included in the forms near the "X" placed on the document by the customer as their signature in the usual manner by the attorney at law or other independent professional advisor, certifying that the document was read and explained to the customer, who then appeared to have understood and affixed their 'X' to the document.

The forms must however be submitted by the customer in person. FATCA forms should not be submitted by third parties on behalf of the customer as a general rule (exceptional cases will be considered).

### **How is the Bank addressing minors e.g. minor 0-18years (US Person) having a joint Right Start Account with an Adult (Non US Person)**

#### **a. *Who will sign the Bank's FATCA forms?***

A child can sign once the child understands the FATCA forms i.e. due to the age of the child, he or she understands the meaning of the document. If not, the parent or guardian can sign for the child i.e. a



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parent or guardian should sign the child's name followed by the words *"By (signature), parent (or guardian) for minor child "*.

### b. **Who will sign the IRS tax forms?**

Generally, a child is responsible for filing his or her own US tax return/tax forms and for paying any tax, penalties, or interest on that return under US tax law. By extension, a child can sign his or her tax return and US tax forms and provide the social security number (SSN). If the child cannot sign his or her return/tax form i.e. due to the age of the child, a parent or guardian must sign the child's name followed by the words *"By (signature), parent (or guardian) for minor child."*

### **What information will the Bank need to report to the IRS?**

- Your name, address and SSN or TIN of each account holder that is a US person;
- Your account number;
- Your account balance or value as at the end of the year
- Payments to and from your account, such as interest payments

### **What assurance do I have that my data will be protected when disclosed to the IRS?**

Republic Bank (Barbados) Limited has always been committed to keeping our customers' personal information confidential and secure. Our response to FATCA will be held to our standard of strict compliance with our confidentiality obligations, and our approach will reflect our longstanding commitment to customer privacy and service excellence. The IRS has designed a schema which is to be utilized by all FFIs required to report (which includes all Banks), BRA and the IRS. This will ensure that the data transferred from Republic Bank (Barbados) Limited to BRA, and thereafter, from BRA to the IRS is managed with the highest degree of confidentiality and security.

### **What are the specified foreign financial assets that the IRS is interested in for those who fall under FATCA?**

- ✓ Financial (deposit and custodial) accounts held at Non US financial institutions
- ✓ Non US stock or securities not held in a financial account

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- ✓ Non US partnership interests
- ✓ Non US mutual funds
- ✓ Non US-issued life insurance or annuity contract with a cash-value
- ✓ Non US hedge funds and Non US private equity funds

### **Does FATCA replace the existing US tax withholding and reporting regimes?**

No. It does not replace the existing US tax withholding and reporting regimes. It does, however, add additional requirements to the existing regimes.

### **I live and work in Barbados, but I am the holder of a US Green Card and I travel to the US every year for short periods to maintain my US Green Card status, will I be affected by FATCA?**

FATCA will generally apply to you as a Green Card holder.

### **But as US Green Card holder I already pay taxes in Barbados why I am still subject to FATCA?**

A U.S Green Card holder is under U.S law considered a U.S taxpayer.

Under U.S law, Green Card holders are required to declare their financial information directly to the IRS by filing a Form 8938 (Statement of Specified Foreign Financial Assets) and a Form TD F 90-22.1 (Report of Foreign Bank and Financial Accounts). These forms which you are required to do routinely actually obtain more financial information from you than FATCA. FATCA is an extra method being used by the US Government to ensure the information is collected and that it is no longer the sole responsibility of the account holder, but now responsibility also lies with the Bank.

However as a US Green Card holder living outside the United States, as you may already know there are some special exemptions for US citizens and Green Card holders living outside the US, and the US also allows a credit for Barbados taxes paid, and so there may not be any US taxes due on your local income.

Please check: <http://www.irs.gov/uac/Five-Facts-about-the-Foreign-Earned-Income-Exclusion> or a US tax consultant.

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### **What if I am a Green Card holder and living in Barbados and I have a joint account with someone?**

If the other person(s) is not a U.S resident/ citizen or U.S Green Card holder and has no official connection to the U.S, then your account will still fall under FATCA simply because you are considered a US tax payer as the Green Card holder.

### **What if I have different accounts at different banks each with under US\$50,000, but amounting to more than that sum in total, will I be subjected to FATCA?**

You may not be reported by each financial institution. However the IRS may detect your total balances.

### **If I am a Barbados citizen with no formal connections to the United States but I have immediate family members living there and I send money via wire transfers amounting to more than US \$50,000 to the United States to support them (e.g. a child at school), will I be subjected to FATCA?**

You may be asked to sign an IRS tax form (W-8BEN) and a Bank FATCA form (Non US Person Declaration) stating that you are not a US person. You may not fall under FATCA reporting requirements so the Bank may not report your financial information to the IRS.

### **If I do not have a US Green Card but I spend several weeks each year in the United States will I be subject to FATCA?**

Only if your time in the US amounts to more than 183 days, then you may be subjected to FATCA. Please check your independent or US tax consultant.

### **I live in Barbados and I have no official ties to the United States but I shop online using a US mailing address, which is also attached to my credit card, will I be subject to FATCA?**

This address does not make you a US resident or citizen. However, if this is the only address on your account, you may be asked to sign an IRS tax form (W-8BEN) and other bank FATCA forms (Non US Person Declaration and Non US Person Letter of Explanation of US Address) stating that you are not a US person and the written explanation for the US mailing address as well as provide other documentary evidence in support of your non US tax status e.g. copy of Non US passport. There may be no reporting of your financial information to the IRS.

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### **Do I have a choice in the matter?**

The IGA which the Barbados Government has signed with the US Treasury makes it law in Barbados for the information to be collected and reported by all Barbados FFIs (including all banks) to BRA. All Barbados FFIs therefore must comply or face consequences of non-compliance. If customers of Barbados FFIs are not willing to cooperate, all Barbados FFIs must report them to BRA, who will in turn forward this information to the US IRS.

*In light of the aforementioned, we urge you to cooperate. We also encourage you to seek advice from an independent tax advisor should you need assistance in understanding the scope of these new reporting requirements, and the consequences of non-compliance.*

*Should you have any questions relating to the Bank's requirements, please contact our Customer Contact Centre at 227-2700 or email us at [-info@republicbarbados.com](mailto:info@republicbarbados.com).*

*For updates and further information on FATCA, please visit the IRS FATCA page at [www.irs.gov/FATCA](http://www.irs.gov/FATCA).*

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